

**IN THE UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF TEXAS  
GALVESTON DIVISION**

<b>EMILY MILBURN, Individually and as Next friend of DYMOND LARAE MILBURN</b>	§ § § § v.	§ § § § §
<b>CIVIL ACTION NO. 08-193</b>		
<b>SERGEANT GILBERT GOMEZ (BADGE #987), OFFICERS DAVID ROARK (BADGE #332), JUSTIN POPOVICH (BADGE #336), and SEAN STEWART (BADGE #392)</b>	§ § § § §	<b>JURY DEMAND</b>

**DEFENDANTS' ADVISORY REGARDING  
DEFENDANTS' COMPLIANCE WITH THE DOCKET CONTROL ORDER**

TO THIS HONORABLE UNITED STATES DISTRICT COURT:

Defendants, Sergeant Gilbert Gomez and Officers David Roark and Sean Stewart, come now and file their Advisory to the Court evidencing the Defendants' compliance with the Court's Docket Control Order.

1. Judge Sim Lake held the initial scheduling conference in this case on December 12, 2009 {*Doc. no. 11*} and entered the Controlling Docket Control Order {*Doc. no. 12*}.
2. The Docket Control Order required completion of discovery by August 28, 2009. *Id.*
3. The Parties participated in mediation early in the litigation and, on August 31, 2009 after the close of discovery, the Parties counsel exchanged further correspondence regarding the potential for settlement. {*Exs. A & B*}.
4. On September 1, 2009, Judge Lake entered an Order transferring this case to Judge Kenneth Hoyt. That Order further expressly provided that the deadlines in existing scheduling orders remain in effect but all court settings were cancelled. {*Doc. no. 28*}.

5. On September 3, 2009, the Defendants' counsel sent additional correspondence to Plaintiff's counsel regarding settlement negotiations.<sup>1</sup> {*Ex. C*}.

6. After the mediator conferred again with the Parties' counsel regarding the possibility of settling this suit, on September 10, 2009, the mediator sent correspondence to Judge Hoyt informing him that the Parties had mediated and declaring that they had reached an impasse on settlement. {*Ex. D*}.

7. The Docket Control Order established the deadline for Dispositive Motions to be within thirty (30) days after a mediator declares impasse and established September 18, 2009, as the deadline for filing of all other pretrial motions. The Docket Control Order also provided that no instrument filed within seven (7) days of Docket Call would be considered and scheduled the initial Docket Call Date of October 9, 2009. {*Doc. no. 12*}.

8. On September 16, 2009, the Defendants filed a motion for summary judgment based upon their qualified immunity. {*Doc. no. 29*}.

9. Thereafter, on September 18, 2009, Judge Hoyt entered an Order scheduling Docket Call for November 16, 2009.<sup>2</sup> {*Doc. no. 30*}.

10. On October 12, 2009, the Plaintiffs filed a response to the Defendants' motion for summary judgment along with a motion requesting leave to file their untimely response. {*Doc. no. 32, 33*}.

11. On October 15, 2009, Judge Hoyt entered an Order granting the Plaintiffs' request to file their untimely response to the Defendants' motion for summary judgment. {*Doc. no. 34*}.

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<sup>1</sup> The Defendants have submitted redacted settlement correspondence having removed the specific amounts discussed so that no Party will be prejudiced by the correspondence.

<sup>2</sup> As discussed *supra*, on September 1, 2009, Judge Lake had previously cancelled *all* court settings. {*Doc. no. 28*}.

12. A few hours later on October 15, 2009, Judge Hoyt entered an Order denying the Defendants motion for summary judgment deeming it untimely filed, without considering the merits of the Defendants claim to immunity. {*Doc. no. 35*}.

Respectfully submitted,

/S/ Norman Ray Giles  
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**ATTORNEYS FOR DEFENDANTS**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been forwarded to the following counsel of record in accordance with the District's ECF service rules on this 29<sup>th</sup> day of October, 2009.

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/S/ Norman Ray Giles